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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,856	05/13/2005	Georg Wanninger	1291.1000	8982
7590 Russell D Culbertson The Culbertson Group Suite 420 1114 Lost Creek Boulevard Austin, TX 78746			EXAMINER ADAMS, GREGORY W	
			ART UNIT 3652	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/27/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/534,856

Applicant(s)

WANNINGER ET AL.

Examiner

Gregory W. Adams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/13/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a movable foot element (see page 10, lines 9-10), does not reasonably provide enablement for movement in the Z-direction. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. The claims require the functionality of a foot element that moves in a Z-direction but the disclosure does not provide the means. Given that there are infinite means in which to create linear motion, its not possible from a fair reading of the Applicants disclosure to comprehend the scope of claim 23.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 23, line 8 the phrase "and/or" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173. Its not clear if the limitation that follows is required or is optional, a determination directly related to scope. For examination

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purposes, it is assumed that Applicant intended the subsequent limitation to be optional, e.g. --or--. See also line 11; claim 27, line 2; claim 28, line 2; claim 32, line 2.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 17-24, 26-29 & 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Convey, Jr. (US 4,498,381).

With respect to claims 17-24, 26-29, 31-32, Convey, Jr. discloses a reloading apparatus including:

- (a) a rear wall 37 with a lower and an upper end, in which the rear wall 37 runs in a direction and the direction is essentially vertically aligned in an initial position;
- (b) a foot element 48a-b, 76 adjacent to the lower end of rear wall 37 to accommodate a product stack arranged on a first transport element, wherein a foot element 48a-b, 76 can be pivoted around a pivot axis running parallel to rear wall and/or can be displaced in the direction;
- (c) with a fastening cover 46 arranged on the upper end of the rear wall (R), moveable in a direction and/or pivotable around an axis for clamping of the stack in direction between fastening cover and foot element; and

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- (d) with at least two side clamping jaws 54 to clamp the stack from the right and left between clamping jaws.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Convey, Jr. (US 4,498,381) in view of Postlewaite (US 3,123,232).

With respect to claim 25, Convey, Jr. does not disclose two rear wall elements. Postlewaite discloses two rear wall elements 33, 47 movable relative to one another to move a transport element such that a stack of different materials, types or ownerships may be transferred from one pallet to another. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Convey, Jr. to include two rear wall elements movable relative to one another, as per the teachings of Postlewaite, to improve on pallet to pallet transfer.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Convey, Jr. (US 4,498,381) in view of Thompson et al. (US 3,724,089).

With respect to claim 30, Convey, Jr. does not disclose a vibrating element. Thompson et al. disclose a vibrating element 82 to aid in alignment of stacked items in a reclined position greatly enhancing the edge-aligning feature. C4/L15. Therefore, it

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would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Convey, Jr. to include a vibrating element, as per the teachings of Thompson et al., to improve on edge alignment of stacked goods.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA


GENE C. CRAWFORD
SUPERVISORY PATENT EXAMINER